C.F. 71 & 72.

19

Department of

OFFICE

STATION

No. 365

Dated 3-12-32

To whom sent.

Date	Initial
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Examined	
Signed	
Given for despatch	
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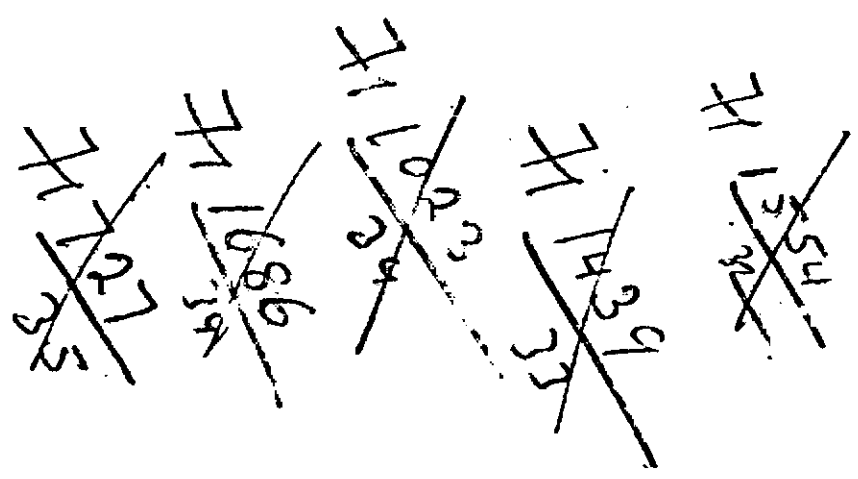
(SUBJECT.)



F. 32

In reply, please quote number, date and short title.*

DEPARTMENT.

Received *Registered* F6F32

From (Name) F.W. Stewart Esq.,O.I.E.,I.C.S.,

(Designation) Collector of Bellary

Post Box (Station) Bellary

Telegraphic Address

BOARD OF REVENUE
29 NOV 1932
RECEIVED

To The Secretary to the Commissioners,
Board of Revenue, Land Revenue & Settlement
Madras

No. , *dated* 19 .

Sir Ker.C. 3301/32 28.11.32

Enclosures Copy of the petition.

Spare Copies

Insolvency -sale of the property by Official Receiver -interlocutory application for cancellation filing -sanction requested -

---

One Kappagal Erappa of Kappagal(G) in Bellary taluk was given four loans under both the loans acts in fasalies 1331 and 1332 to an aggregate amount of Rs.2650. Subsequently the borrower filed an insolvency petition. A proof of debt was filed and the Official Receiver was authorised to sell the lands free of encumbrance provided a first charge was created on the sale proceeds in favour of Government. Though the property of the insolvent was sold on 10.10.31 the Official Receiver intimated to me for the first time on 23.7.32 that the dividend due to the Government was only Rs.651.4.0 and that early arrangements might be made for receiving the said sum. Finding that the amount of dividend was highly disproportionate to the amount of loans granted and the value of the lands, I instituted enquiries forthwith and learnt that some of the lands were sold to the insolvent's son and his wife's sister for a nominal price. I am convinced that fraud has been practised in the ~~sale~~. 5 2

2. I am therefore filing an interlocutory application to set aside the sale and to the

the Official Receiver. A copy of the application is enclosed for approval if the Board's sanction is necessary for filing such applications.

3. I am not aware of the authority from Government under which the Collector can waive the security and consider it a very dangerous and unnecessary practice. If theCollector was not authorised a further ground for setting aside the sale can be taken by a further application and I request orders on the point.

28.11.32

For Collector

R.V. 28.11

28/11/32

IN THE COURT OF THE DISTRICT JUDGE OF BELLARY

Insolvency Petition No. 13 of 1927.

I.A. No. of 1932

In the matter of Kappagal Erappa - insolvent

Between

The Secretary of State for India in Council represented by the Collector of Bellary	Petitioner

And

1. Kappagal Idiga Erappa 2. Kappagal Idiga Sunkappa 3. Kappagal Idiga Seshamma 4. Bellary Arele Luddappa 5. M.R.Ry., T. Sankaralingam Pillay Official Receiver, Bellary	Counter petitioners

Application on behalf of the petitioner under Section 68 of the Provincial Insolvency Act respectfully showeth:--

1. The 1st counter - petitioner was adjudged insolvent by this Hon'ble Court on 26.1.1928.

2. The petitioner was a secured creditor holding three hypothecation bonds executed by the 1st counter-petitioner in connection with Takkavi loans granted to him. The total amount due from the 1st counter-petitioner was about Rs.2650/-.

3. The petitioner proved his debt for Rs.2764.0.9 on 3.9.29 and at the same time on a reference from the Official Receiver the petitioner agreed that the properties hypothecated for the Takkavi loans may be sold free on condition that the petitioner's claim should be a first charge on the amount realised.

4. The said properties were advertised for sale on 2.7.30 but the sale was adjourned on account of want of bidders.

5. On 13.11.1930 the petitioner requested the -- Official Receiver to give wide publication of the

the sales and give due intimation to the officers concerned about the date fixed for the sale etc.,.

6. On 9.10.1931 the Tahsildar of Bellary received a notice dated 7.10.31 from the Official Receiver stating that the properties were advertised for sale on 10.10.31.

7. On 25.11.1931 the Official Receiver for the first time intimated to the petitioner that the sales were held on 10.10.31, that an amount of Rs.660/- was realised by such sales; that there was an application by one of the creditors offering Rs.700/- for two of the seven items sold and that the matter of resale was pending before the District Court of Bellary the result of which would be intimated to the petitioner in due course.

8. On or about 16.6.1932 the Official Receiver intimated to the Tahsildar of Bellary that the hypothecated lands were sold by public auction and they were purchased by the 2nd, 3rd and 4th counter-petitioners. Again on 19.7.32 the Official Receiver stated that a sum of Rs.790/- was realised by the sale of the properties and that a dividend of Rs.631.4.0 was due to the petitioner. Subsequently the Official Receiver sent a cheque for this amount.

9. The petitioner was surprised that an extent of 89 acres and odd was sold only for Rs.790/-. At the time of granting the Takkavi loans, the estimated price was Rs.25 per acre. Consequently the petitioner instituted enquiries to ascertain the reason for the huge depreciation of the value in the lands at the time of the auction. The result of the petitioner's enquiries has disclosed the following facts:--

(a) That Idiga Sunkanna, the 2nd counter-petitioner who has purchased S.No. 263/A of 13 acres and 62 cents in extent for Rs.60/- is an undivided son of the insolvent (the 1st counter-petitioner) and has no separate property of his own. The said Sunkappa has given a statement that

that he was not present at the sale and he knows nothing about it. It is also discovered that the sale lists do not contain the signature of Munikappa at all.

(b) Idiga Seshamma, the 3rd counter-petitioner, is the first counter-petitioner's wife's sister. The 1st counter-petitioner's wife is dead. Idiga Seshamma is a widow who is living with the 1st counter-petitioner for a number of years. She cooks food for him. She has no property of her own. She is alleged to have purchased S.Nos. 120 & 124 C (a total extent of 48 acres and 56 cents) for a sum of Rs.385/. It is also discovered that the lands alleged to have been purchased by the said Seshamma are being cultivated by the insolvent,(1st counter-petitioner) himself. It is further discovered that at the time of the sale the 1st counter-petitioner represented to the bidders present there that Seshamma being destitute needed some and that he was, therefore, purchasing the lands in her name for her maintenance.

(c) S.Nos. 61 A, 61 B, 404 A(a total extent of 12 acres and 18 cents) has been purchased by the 4th counter petitioner for a very low sum. It is ascertained that the 4th counter-petitioner who is a creditor himself is a rich money lender and exercises enormous influence in the village. It is also ascertained that at the time of the auction it was represented to the Official Receiver that the bids were low to which the Official Receiver said that the question would be considered at the time of the confirmation of the sale.

(d) It is also ascertained that S.No. 263 A which belongs to Sriveram Village was sold at the auction without any intimation being given to the village officers of Sirivaram. It is also ascertained that the person who is supposed to have bid on behalf of the 3rd counter-petitioner was no other than the son-in-law of the insolvent.

(e) Very few important ryots were present at the time of the sale. The Village Officers of Kappal were not --

not asked to proclaim the sale by beat of tom tom

10. Fraud has been practised upon the Court and perhaps upon the Official Receiver as well in obtaining a sale of some of the properties in favour of the 2nd and 3rd counter petitioners. Undu influence is the cause for the low price at which some of the lands were sold to the 4th counter-petitioner. Wide publicity was not given to the sale and reasonable precautions have not been taken to realise the best price for the lands sold. The sales held on 10.10.31 are therefore, are tainted with fraud and material irregularity.

11 The petitioner therefore, prays that the sales of the insolvent's properties described hereunder may be set aside and resale may be ordered

	Village	No.	A	
1	Kappagal	61	0	6
2	"	61	7	9
3	"	120	18	5
4	"	404	34	8
5	"	124	30	3
6	"	243	15	4
7	Srivaram	263	13	2

12. The petitioner prays that the delay in filing this application may be excused under Section 78 of the Provincial Insolvency Act 5 of the Indian Limitation Act. The petitioner did not know about the fraud practised and the material irregularities involved till recently. The petitioner further submits that any order of the court obtained by fraud is null and void and can be vacated by the Court at any time in the exercise of its inherent powers of jurisdiction.

Petitioner

Government Pleader.

Verification

I, F.W. Stewart, Esq., I.C.S., the Collector of Bellary do hereby declare that what is stated above is true and correct to the best of my information and belief

Petitioner 20/1/32

C/F. 32

reply, please quote number, date and short title.*

..... DEPARTMENT.

Received ..... *Registered* A3996

F6890.

From (Name) F.W. Stewart Esq.,O.I.E.,I.C.S.,

(Designation) Collector of Bellary

Post Box ..... (Station) Bellary

Telegraphic Address .....

To The Secretary to the Commissioners,

Board of Revenue, Land Rev. & Settlement,

Madras

Ref.No. *No.* 3001/32, *dated* 1.12.32 19

Sir

*

Enclosures Copy of Rec petition

Spare Copies

Insolvency -sale of the property by Official Receiver - Interlocutory application for cancellation filing -

Ref. This office letter No.O. 3001/32 dated 28.11.32.

As the original petition did not state clearly the dates of the several facts noted therein, the Government Pleader has sent a revised petition copy enclosed.

2. As the petition has to be filed in the District court before 5th, I have approved it and sent to him for taking further action.

2-12-32

For Collector

K.V. 2.12

2.12.32

In the Court of the District Judge, Bellary

Insolvency petition No. 10 of 1927

I.A. No. of 1932.

In the matter of Kappagal Erappa - insolvent

between

The Secretary of State for India in Council represented by the Collector of Bellary. ... Petitioner

and

1. Kappagal Iduga Erappa
2. Kappagal Iduga Sunkappa
3. Kappagal Iduga Sekamma ... Counter petitioner
4. Bellary Area Muddappa
5. M.A.Ry., A.Venkatalingam Pillay, Official Receiver, Bellary.

Application on behalf of the petitioner under Sec.68 of the Provincial Insolvency Act respectfully showeth.

1. The 1st counter petitioner was adjudged insolvent by this Hon'ble Court on 20.1.1928.

2. The petitioner was a secured creditor holding three hypothecation bonds executed by the 1st counter-petitioner in connection with Takkavi loans granted to him. The total amount due from the 1st counter petitioner was about Rs.2650.

3. The petitioner proved his debt for Rs.2704-... on 3.9.28 and at the same time on a reference from the Official Receiver the petitioner agreed that the properties hypothecated for the Takkavi loans may be sold free of mortgage on condition that the petitioner's claim should be a first charge on the amount realised.

4. The said properties were advertised for sale on 2.7.30 but the sale was adjourned on account of want of bidders.

On 15.12.30 the petitioner requested the Official Receiver to give wide publication of the sales and to give due intimation to the Officers concerned about the date fixed for the sale etc.

6. On 10.10.31 the Official Receiver appears to have held the sale of the lands hypothecated to the petitioner in the village of Kappagal. According to the information of the petitioner very few bidders were present at the sale as there was no sufficient advertisement or publicity of the sale.

7. The petitioner is informed that the sale was reported to the court on 26.1.32 and confirmed by this hon'ble Court on 29.1.32. The petitioner did not know about this report or confirmation at the time.

8. On 16.6.32 the Tahsildar of Bellary wrote to the petitioner that the Official Receiver had not furnished to him the particulars of the lands sold and the amounts realised whereupon this petitioner wrote to the Official Receiver on 28.6.32 for information about the amount realised and other particulars of the sale. The Official Receiver gave a reply to this letter on 19.7.32 but this reply did not contain all the particulars required by the petitioner. The petitioner was surprised that an extent of 89 acres and odd was sold for such a low sum as Rs.790 especially as at the time of granting the Taccavi loans the estimated price was Rs.25 per acre. Consequently the petitioner directed the Tahsildar to find out all the particulars connected with the sale and the purchasers.

9. On 26.9.32 the Tahsildar of Bellary reported to the petitioner that he had ascertained from the Official Receiver that two of the purchasers were related to the insolvent himself but that further particulars had not been furnished by the Official Receiver. The petitioner directed the Tahsildar once again to collect information and make a full report in the matter.

10. On 15.11.32 the Tahsildar of Bellary gave a full report of the information he has gathered and the result of his enquiries has disclosed the following facts

(a) That Idiga Sunkappa the 2nd counter petitioner who has purchased S.No.263 A of 13 acres and 62 cents in extent for Rs.69 is an undivided son of the insolvent (the 1st counter petitioner) and has no separate property of his own. The said Sunkappa has

was given a statement on 5.11.62 that he did not present it to the Sale and he knows nothing about it. It is also discovered that these alts do not contain the signature of Sankappa at all. (c) Laiga Seshamma, the 3rd counter petitioner, is the first petitioner's wife's sister. The 1st counter petitioner's name is Veeru. Laiga Seshamma is a widow who is living with the 1st counter petitioner for a number of years. She cooks food for him. She has no property of her own. She is alleged to have purchased alts. Nos. 120 & 124 of (a total extent of 45 cents) for a sum of Rs.600. It is also discovered that the lands alleged to have been purchased by the wife are being cultivated by the 1st counter petitioner, himself. It is further discovered that at the time of the sale the 1st counter petitioner was elected to the Zillaparishad where the 3rd Seshamma being destitute needed some help and hence was, therefore, purchasing the lands in her name for her maintenance. This is borne out by the statements on 5.11.62 when the statements of the village officers and other ryots were taken by the Amildar.

(c) Alts. Nos. 61 A, 61 B, 104 & 105 to a total extent of 12 acres in Kasaba village, was also purchased by the 4th counter petitioner under Ex.P.4. It is ascertained that the 4th counter-petitioner was in possession of the land more than an extent of 5 years immediately before the sale in the village. It is also ascertained that at the time of the action it was registered in the Occupier's Register that the alts were low which the officials were liable that the action would be remedied at the time of the Consolidation of the area. This information is also borne out from 5.11.62 when the village officers and other ryots were examined.

(d) It is also ascertained that Rs.200 which was said to Srivatsa village was used for the action without any action being given to the village officers of Srivatsa. It is also ascertained that the petitioner was in the village on behalf of the 1st counter petitioner was not in the village at the relevant time. This information is also borne out

on 5.11.32 when the village officers of Sirivaram gave a statement.

(e) Very few important ryots were present at the time of the sale. The village officers of Kappagal were not asked to proclaim the sale by beat of tom tom.

11. Fraud has been practised upon the court and perhaps upon the Official Receiver as well in obtaining a sale of some of the properties in favour of the 2nd and 3rd counter petitioners. Undue influence is the cause for the low prices at which some of the lands were sold to the 4th counter petitioner. Wide publicity was not given to the sales and reasonable precautions have not been taken to realise the best price for the lands sold. The sales held on 10.10.31 therefore are tainted with fraud and material irregularity.

12. The petitioner, therefore, prays that the sales of the insolvent's properties described hereunder may be set aside and resale may be ordered.

	Village	S.No	A.C
1	Kappagal	61 A	0- 66
2	"	61 B	7- 39
3	"	120 L	18 05
4	"	404 A	4 08
5	"	124 C	30 55
6	"	123 J	15 64
7	Sirivaram	283 A	13 62

84.99

13. The petitioner prays that the delay in filing this application may be excused under Section 78 of the Provincial Insolvency Act read with Section 5 of the Indian Limitation Act. The petitioner did not know about the fraud practised and the material irregularities involved till 15.11.32. (See para 10 on p. 6)

14. The petitioner further submits that any order of the court obtained by fraud is null and void and can be vacated by the court at any time in the exercise of its inherent powers of jurisdiction.

Government Pleader

Sd. W.Stewart
Petitioner

Verification

I,F.W.Stewart Esq.,I.C.S, the Collector of Bellary do

do hereby declare that what is stated above is true and correct to the best of my information and belief.

Sd. F.N.Stewart

Collector

True Copy

2 XII-32

For Collector

N.V. 2.12

12/12/32

15

R. F. XXII-A-19—23,004—15-3-32.(6)

Subject.

FOR MEMBER.

Advances - Loans - (Bellary) - Bellary Cabeh - Kappal (G) - Kappagal Evappa - Insolvency - Sale of property by Official Receiver - Insolvency appln for Cancellation

READ AGAIN B. P. No. _____, dated Approved. _____ 193

" " " _____, " _____ 193

READ ALSO :—

Register No. 6.12 From the F. 6832/32, No. _____, dated _____ 193

P. 7 Cf. F. 6890/32 } Q.

" " _____, " " _____, " _____, " _____ 193

" " _____, " " _____, " _____, " _____ 193

RESOLUTION. M(S) No. 605 dated 5. 2. 1932

The revised Insolvency Appln subd by the Collr with his letter second read above Ref. C 3301/32 dt 18.32 is approved His action in having filed it is also approved

2/. The Board agrees with the Collr that a further appln should be filed adducing the supplemental ground, for setting aside the sale, that the Collr was not authorised to relinquish the security without obtaining the previous orders of the Board or Govt.

3/. This further application should be filed with the least practicable delay. A copy of it shd be submd to the Board

To

The Collr. of Bellary.

6.2.32.

6/2

C F. 32

DEPARTMENT.

In reply, please quote number, date and short title.

Received ..... Registered 17117

From (Name) F. .. Stewart Esqr., C.I..., I..S.,

(Designation) District Magistrate,

Post Box ..... (Station) Salem.

Telegraphic Address .....

BOARD OF REVENUE
13 DEC 1932
AND COMMERCE AND CONTROL

X 3
117

To The Secretary to the Commissioners,
Board of Land Revenue and Settlement,

Madras.

Ref.C. No.3601/32, dated 15-12-32. 19

Sir

* Advances - Loans - Sellary Tals - (Kerpa) No. 69, Kappal Arrpa - Insolvency - Sale of property by Official receiver - Supplemental Application.

Boards Reference B.R. is. 3606 dated 6-12-32.

A further application aducing the supplemental ground for setting aside the sale, has approved and sent to the Government Pleader for filing in the Court. A copy of it is enclosed.

ENCLOSURES ..... one

SPARE COPIES .....

A.S.L./16-12. for Collector.

H.S. (Sel.)

Subj to the Board with refce to the last sentence of the B.P.
This may be filed with B.P. No. 3606 at (A)
6.12.32

19.12.32

In the Court of the District Judge of Bellary.

Insolvency Petition No. 13 of 1927.

I.A.No. of 1932.

--

In the matter of Kappagal Krappa — Insolvent

Between

The Secretary of State for India in Council represented by the Collector of Bellary. — Petitioner

A n d

1. Kappagal Idiga Krappa. 2. Kappagal Idiga Bunkappa. 3. Kappagal Idiga Sesnamma. 4. Bellary Arele Buddappa 5. A.A.Ky., 6. Sankaralingam Pillai Official Receiver, Bellary. — Counter - petitioners

Application on behalf of the petitioner under Section 151 C.P.C. and Section 68 of the Provincial Insolvency Act, respectfully showeth:--

1. The petitioner has filed I.A.No. 669 of 1932 in this Honourable Court praying that certain sales of the 1st counter petitioner's properties held by the Official Receiver on 10.10.31 may be set aside on the ground of fraud and material irregularity. The said application was filed on 2.12.1932.

2. Subsequently the petitioner has been advised to urge a further ground in support of his application to set aside the said sale, the further ground being that the said sale is void for the reason that the Official Receiver could not sell the properties free from encumbrances held by the Government for their Takavi loans. The petitioner urges that the Collector had no authority to relinquish the security on the Takkavi loans in question without obtaining the previous orders of the Board of Government. This he did not do. Consequently the sale held by the Official Receiver was illegal and

---4--- 2°

and should be set aside.

R Stewart
Petitioner

Verification:--

I, F.W. Stewart Esq., I.C.S., the Collector of Bellary do hereby declare that what is stated above is true and correct to the best of my information and belief.

R Stewart.
Petitioner

15-12-3

Note file

Advances - Loans - (Bellary) - Bellary Taluk
Kappagal (G) - Kappagal Erappa - Insolvent
Sale of the property by Official Receiver
Interlocutory application for Cancellation.
Filing - Sanction

M2.
A.S. (Rlt)
Hero. Seen
(with a book)

F. 6832/32.

A.S. (Rlt).

Please see the Collr's letter and enclosure at pp. 1-6. C/f.

2/ The Collr is filing an interlocutory application and has subt a copy of it for the formal approval of the Board. He further solicits orders on the point whether the waiver of the security ~~lands~~ vide ~~to any~~ his authorising the Official Receiver to sell the lands free of encumbrance was within the powers vested in him, and if it was not; he proposes to argue this as a further ground to set aside the sale by putting in a further application.

Board's Lr. dt. 2 C/f.

3/ The action of the Collr in having waived the claims on the security lands without the previous sanction of the Board appears to be unauthorised. Further under sub Secn 6 of Secn 28 of the Provl Insolvency Act, it seems that

BP. 1762 of 2-7-27 on which the Collr of Ramnad had applied for previous sanction of the Govt for filing proof-written statt.

Vide s. 52 of Madras Civil Courts Act VI of 1873 and Civil Courts Act VIII of 1887 & Civil Courts Act

that the Collr, as Secured Creditor, might have brought the securi. lands to Rev sale even aftr the order of adjudication has been passed In that case, even if there had been no bidders owing to combination or other causes, the lands might have been brought in by Govt and disposed of later under favourable circumstances. ~~Here in the present case, as the Coll had presumably relinquished the Claims under Sub Secn 2 of Secn 47 of the Act, and though the Govt dues form the first Charge under Sub Secn 1 of Secn 61, he should have watched the further proceedings in order to see that no fraud was practised.~~

4/ In the ~~circumstan~~ circumstances it seems better that the further Ground referred to by the Collr should also be taken to Cognizance in a Supplemental petition. ~~A Secn will kindly note further if any, with refer to any recent proceedings there.~~

vide para 3 at p 2 of:-

30.11.32.

1.12.32

The Copy of the appln submd by the Coll may be apptd.

The Bd had not authorised the Coll to relinquish the Security - vide Q. Sec 47 of the Pro. Ins Act. The Coll may be told that he may file a suppl. petn with ref. to this point -

2.12.32

A.H.F. 2.12.32

Ind. Papers 5.12.32

A.S. (Selt)

Please see further letter from the Coll. and a Copy of the revised petition at pp. 7-13 ej, which is practically pp. 3-6 ej. the same as the orgl one except for some minor details about Sales. The revised petn has been filed.

Draft dictd below.

6.12.32

6/12/32

⊗ Suppl. To verify & see if any order had been issued.

Verified. No such order seems to have been issued

Ref. to Vol VI of Insp. Act.